Supreme Court, U.S.
FILED

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No.

In the
Supreme Court of the United States

RUSSELL A. SCOTT and LAUREN SCOTT,
Petitioners,

v.

LOLA CRANE RENTAL COMPANY, a corporation, and MARK NICHOLS,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

While participating in a Coast Guard mandated lifeboat drill, plaintiff, who was required to be on and off the vessel to perform his duties, was struck by the vessel's deployed lifeboat while on the dock as it was lifted from the water by a land-based crane brought to the scene because the vessel (a gambling boat) had no crane.

1. Whether plaintiff's injury was caused by a vessel within the ambit of the Extension of Admiralty Jurisdiction Act of 1948 enacted to expand maritime jurisdiction to injuries fortuitously done on land?

2. Whether maritime jurisdiction under the Extension of Admiralty Jurisdiction Act of 1948 is to be based on the character of the parties, as held by the courts below, or on the nature of the facts giving rise to the occurrence as held by other circuits.

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OPINIONS BELOW

The opinion of the Seventh Circuit is reported at 337 F.3d 939, filed July 28, 2003 (App. 1). The order of the U.S. District Court for the Northern District of Illinois is not officially reported. However, the order granting summary judgment as to plaintiffs' claim against respondents Lola Crane Rental Co. and Mark Nichols does appear at 2001 WL 185477 and at App. 14 hereto. Orders as to two other defendants are not the subject of this petition.

JURISDICTION

The Seventh Circuit filed its opinion and entered judgment on July 28, 2003. This Court has jurisdiction to review the decision by writ of certiorari pursuant to 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Plaintiff Russell Scott's action was for injuries received during a lifeboat drill taking place on and off the vessel, Trump Casino. A land-based crane, brought to the scene because the vessel had no crane, hoisted a deployed Trump raft from the water and a gust of wind caused the raft to strike plaintiff who was at that phase of the drill standing on the dock. Counts V and VI of his complaint against Nichols, the crane operator, and Lola Crane Rental, the crane owner, asserted the district court's general maritime jurisdiction.

The district court granted summary judgment to these defendants and appeal was taken to the Seventh Circuit from the judgment that no general maritime jurisdiction existed as to Lola and Nichols. The Seventh Circuit Court of Appeals agreed but dismissed the plaintiff's appeal "for lack of subject matter jurisdiction.".

STATEMENT OF FACTS

On April 4, 1997, the date of the occurrence, plaintiff was employed as training director for Total Marine Safety Center ("Total Marine") engaged exclusively in fulfilling safety requirements for owners of marine vessels mainly engaged in gambling activity. (Affidavit of Scott ¶1, Ex. A to Plaintiffs' Resp. to Lola and Nichols Sum. Judg. Mo. (Doc. 21)). He frequently sailed with vessels to evaluate a crew's performance and used about 25% of this time in this manner. (Supp. Rec., Scott Dep. p. 113, Ex. A to Plaintiff's Resp. to Trump Sum. Judg. Mo. (Doc. 41))

On said date plaintiff was directing a drill to prove Trump's compliance with a U.S. Coast Guard directive that Trump demonstrate satisfactory operation of the vessel's liferaft guylines which connected each raft to an assigned escape slide system. (Scott Affidavit, *supra*, ¶5) During this operation, a raft was deployed from the vessel into the water and then towed to an auxiliary pier so that it could be lifted out of the water, inspected, repacked and eventually replaced on the vessel. (*Id*, ¶6, 7)

During the drill, plaintiff and his co-employees were present on board the Trump vessel, in the water in the vessel's liferafts and on the adjoining pier to which the vessel was docked. (Supp. Rec., Affidavit of Crissy ¶2, Ex. A to Plaintiffs' Resp. to Trump Sum. Judg. Mo. (Doc. 41))

Trump Casino crew members deployed the rafts, acted as passengers in the rafts and moved them to the adjoining service pier as a part of the drill. (Supp. Rec., Aff. of Crissy ¶4, *supra*, Scott. Dep. *supra*, pp. 88, 90) During the drill, plaintiff had been on board the vessel in the upper decks to make sure the launch of the rafts by Trump crew members was correctly done. (Supp. Rec., Scott Dep., *supra*, p. 108)

As the Trump Casino had no crane on board because it would be unsightly, a crane owned by defendant Lola

Crane Rental and operated by defendant Nichols was retained by Total Marine to lift the raft from the water as an integral part of this marine operation. Total Marine personnel were required to board the raft to connect the crane ball to the raft so that it could be lifted out of the water. (Affidavit of Russell Scott, ¶7, 8, 9, Ex. A to Plaintiffs' Resp. to Lola Sum. Judg. Mo. (Doc. 21)).

While plaintiff was momentarily on the dock, a wind gust caused the raft to strike plaintiff while it was in the process of being lifted out of the water by the crane operated by Nichols. (Aff. of Scott ¶10, Ex. A to Plaintiffs' Resp. to Lola Sum. Judg. Mo. (Doc. 21)).

Harold Ellebracht, the Trump vessel's captain, averred that Trump Casino needed life-saving equipment in order to operate on the navigable waters of Lake Michigan. (Affidavit of Harold Ellebracht ¶¶3, 4, Ex. C to Plaintiffs' Resp. to Lola Mo. (Doc. 21)) Captain Ellebracht affirms that all parties were acting pursuant to a Coast Guard directive. Ellebracht notes that the usual custom and practice was to navigate all rafts deployed from the vessel to an auxiliary pier in order to be lifted out of the waters of Lake Michigan and "this was part of the marine activity in which Russell Scott was involved." (*Id.* ¶12) He further avers that "the work that plaintiff Russell Scott performed on April 4, 1997, contributed to the function, mission and welfare of the vessel, Trump Casino." (*Id.* ¶13)

RELEVANT STATUTES

28 U.S.C. §1333(1):

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, ***.

46 App. U.S.C.§740, known as the Extension of Admiralty Jurisdiction Act of 1948:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

REASONS WHY CERTIORARI OUGHT TO BE GRANTED.

The Seventh Circuit's Opinion Adds To The Confusion Over The Line Between Land And Water By Employing A Mechanical Application Of The Locality Test Not Consonant With The Purposes Of Maritime Law And Holdings Of Other Circuits.

Plaintiff's injury was "done or consummated on land" during a maritime activity that could not take place without the integral component of a crane and thus where it was located does not govern the outcome of plaintiff's case. Moreover, the liferaft which struck plaintiff was equipment of the Trump vessel which was in the course of a "round trip" to be deflated, repacked and eventually replaced as part of the vessel's safety requirements.

In *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), this Court began its analysis by noting the original test was that admiralty jurisdiction existed only if "the tort occurred on navigable waters." (*Id.* at 531) The Court stated the foregoing rule was expanded with passage of the Extension of Admiralty Jurisdiction Act of 1948, 46 App. U.S.C. §740, which provides:

> "The admiralty and maritime jurisdiction of the United States shall extend to and include *all cases*

> of damage or injury, to person or property, *caused by a vessel* on navigable water, notwithstanding that such damage or injury be done or consummated on land." (Emphasis ours.)

Grubart characterized the purpose of the Act as "a congressional modification to gather the odd case into admiralty." *Grubart* restated the tests for maritime jurisdiction as requiring satisfaction of the conditions "both of location and of connection with maritime activity." *Grubart*, 513 U.S. at 527. Quoting from *Executive Jet Aviation, Inc. v. Cleveland*, 409 U.S. 249, 261 (1972) this Court cautioned that a "purely mechanical application of the locality test" was not always "sensible" or "consonant with the purposes of maritime law." *Id.* at 532-33.

As to location, the Extension of Admiralty Jurisdiction Act's extension of admiralty jurisdiction to shore-based injuries is framed by *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206 (1963), finding an injury "caused by a vessel" where a dock worker was injured when he slipped on loose beans that had leaked from a defective cargo container already on the dock.[1]

An assortment of cases with varying degrees of applicability to the case at bar have found maritime jurisdiction over injuries occurring on docks, near docked ships or involving cranes such as the case at bar. In *Gebhard v. S. S. Hawaiian Legislator*, 425 F.2d 1303 (9th Cir. 1970), admiralty jurisdiction was found where the plaintiff was injured on a pier while directing a pier-based straddle

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[1] *Grubart* also clarified that a defective appurtenance is not a requisite for maritime jurisdiction. "Indeed, the argument that Congress intended admiralty jurisdiction to extend to injuries caused by defective appurtenances, but not to appurtenances in good condition when operated negligently, makes no sense." *Grubart* at 527, n.1.

carrier into position beneath a crane prepatory to loading a container van onto the ship when the carrier ran into him and crushed his leg. The Ninth Circuit found that the Extension Act applies to "all cases" where injury is "caused by a vessel" and thus the plaintiff's action against the stevedore company which controlled the carrier was within the district court's maritime jurisdiction. The Court concluded:

> On its face, therefore, the Act seems to base jurisdiction not on the character of the parties, as in diversity, but on the nature of the facts giving rise to the cause. (425 F.2d at 1307)

Examples of precedent where maritime jurisdiction was found are:

> *Anderson v. U.S.*, 317 F.3d 1235 (11th Cir. 2003), land-based plaintiff injured when Navy aircraft launched from ship at sea mistakenly dropped bombs on him.
>
> *Garrett v. Gutzeit O/Y*, 491 F.2d 228 (4th Cir. 1974), wire bands around bales being lifted to the dock broke causing the bales to fall on the plaintiff stevedore who was on the dock.
>
> *Burrage v. Flota Mercante Grancolumbiana, S. A.*, 431 F.2d 1229 (5th Cir. 1970), longshoreman slipped on a coffee bean on the dock that came from the ship's cargo *the day before*.
>
> *Husar v. Sante Fe Pomeroy, Inc.*, 513 F.2d 1289 (9th Cir. 1975), dock worker on a land-based tractor trailer was struck by pilings being moved to land by a barge crane; court found the facts more jurisdictionally controlled by *Guttierrez* than *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971).
>
> *Kamani v. Port of Houston Authority*, 702 F.2d 612 (5th Cir. 1983), plaintiff longshoreman injured by

the descending jaws of a land-based crane while he was shipboard.

These cases illustrate the myriad situations in which maritime jurisdiction has been determined based upon established principles enunciated by this Court applying the Extension Act, 46 App. U.S.C. §740. They reflect a clear focus on the nature of the facts as a whole as opposed to the character of the parties.

In the case at bar, plaintiff's injury was caused by an appurtenance of the vessel Trump Casino "felt ashore at a time and place not remote from the wrongful act." *Gutierrez*, 373 U.S. at 210. Moreover, as the vessel did not have a winch or crane with which to accomplish the mission required for it to function on navigable waters, a crane was brought to the site and employed as a critical component. Stated another way, if the crane was on the vessel, there would be no question of maritime jurisdiction. Under either scenario, common sense dictates that maritime jurisdiction exists in this case.

After all, no crane, no drill, no Coast Guard compliance, no sail.

Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971), where a land-based worker was injured while moving cargo on a dock that was *not yet loaded* on the ship, is at the other end of the spectrum. There, unlike the case at bar, all facets of the occurrence were purely land-based. *Victory Carriers* correctly refused to "extend the reach of federal law to pier-side accidents caused by a stevedore's own pier-based equipment." 404 U.S. at 204. By contrast, here plaintiff's activity was particularly maritime in nature before and at the time he was injured.

Whether the focus is on the vessel's raft or the integrally required crane, an "appurtenance" of the Trump vessel proximately caused plaintiff's injuries. Clearly, if plaintiff

had been struck during the portion of the drill when he was on the vessel, he could proceed with his case.

Bottom line is that the Extension of Admiralty Jurisdiction Act exists to eliminate the absurdity that a worker can go in and out of maritime jurisdiction during a single maritime activity depending on where he was standing when injured.[2]

Applicable here is this Court's holding in *Waldron v. Moore-McCormack Lines, Inc.*, 386 U.S. 724, 728 (1967), that a shipowner is prevented from escaping liability by "delegating, shifting, or escaping his duty by using men or gear of others to perform the ship's work." At bar, "the ship's work" was underway and "gear of others" was necessarily employed "to perform the ship's work."

The precedent of the Seventh Circuit squarely conflicts with this concept and myriad cases from other circuits which have found maritime jurisdiction by concentrating on the totality of facts giving rise to the occurrence rather than the mechanical identities of the parties.

Review of these issues by this Court is warranted.

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[2] Indeed, when construing the 1972 amendment to the Longshore and Harbor Worker's Compensation Act expanding coverage in a manner similar to that of the Extension of Admiralty Jurisdiction Act, this Court in *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 239 (1977), stated that Congress wanted "to provide continuous coverage throughout their employment to those who, without the 1972 amendments, would be covered only for part of their activity." *Id.* at 273.

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 01-2908

RUSSELL A. SCOTT and LAUREN SCOTT,

Plaintiffs-Appellants,

v.

TRUMP INDIANA, INC., a corporation; LOLA CRANE RENTAL COMPANY, a corporation; and MARK NICHOLS,

Defendants-Appellees,

and

MGI AMERICA, INC., a corporation, d/b/a TOTAL MARINE SAFETY CENTER,

Defendant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 00 C 2001—**John A. Nordberg**, *Judge.*

ARGUED FEBRUARY 21, 2002—DECIDED JULY 28, 2003

Before FLAUM, *Chief Judge,* and HARLINGTON WOOD, JR. and WILLIAMS, *Circuit Judges.*

HARLINGTON WOOD, JR., *Circuit Judge.* Plaintiff-appellant Russell Scott ("Scott") was seriously injured on April 4, 1997, while standing on a pier at Buffington Harbor, Indiana. At the time of his injury, Scott was employed as the

training director for MGI America, Inc., d/b/a Total Marine Safety Center ("Total Marine"). Total Marine was engaged in the business of fulfilling safety requirements for owners of marine vessels. Total Marine contracted with Trump Indiana, Inc. to design, install, and maintain the lifesaving equipment required by the United States Coast Guard for the vessel *Trump Casino*, a gambling establishment.[1] As a part of its agreement with Trump Indiana, Total Marine supplied and serviced the *Trump Casino*'s life rafts and provided life raft training to *Trump Casino* employees.

Scott was an experienced seaman, having served in the U.S. Coast Guard for over twenty years prior to beginning his career with Total Marine. As a part of his job with Total Marine, Scott developed a training course on the deployment of life rafts and the safe evacuation of a ship in the event of trouble. Scott taught this course to personnel from the *Trump Casino* and other Total Marine clients. The majority of the training was conducted at the Total Marine facility located in Mokena, Illinois; however, Scott estimated that he spent about twenty-five percent of his time on clients' vessels, either "servicing or doing needs analysis, developing training or doing on-site training."

On April 4, 1997, a life raft drill was held for the *Trump Casino*. This drill was required by the U.S. Coast Guard to prove satisfactory operation of the *Trump Casino*'s life safety system. Scott was present during the drill, spending time both on the *Trump Casino* and on land. As a part of the drill, one of the *Trump Casino*'s life rafts was inflated and deployed into the water by *Trump Casino* personnel. While the life raft was being launched, Scott observed the drill from the upper decks of the *Trump Casino* to evaluate whether *Trump Casino* employees launched the raft correctly. After the raft was launched, it was towed to an aux-

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[1] The U.S. Coast Guard is the governing marine authority for the vessel *Trump Casino*.

iliary pier to be lifted out of the water and placed on a truck for transport to the Total Marine facility where the raft would be inspected and repackaged for eventual return to the *Trump Casino*.

While most vessels the size of the *Trump Casino* have a crane on-board, the *Trump Casino* did not. Therefore, prior to the drill, Total Marine hired Lola Crane to provide a hydraulic truck crane and crane operator to lift the inflated life raft from the water. Mark Nichols drove the truck crane to Buffington Harbor and positioned the crane on the auxiliary pier. When the deployed raft was brought to the auxiliary pier, Total Marine employees who were in the raft connected the crane ball to the raft. While other employees of Total Marine were actually in the life raft during the drill, Scott himself never entered the life raft. Scott was standing on the auxiliary pier when the life raft was being lifted out of the water. As Nichols used the crane to lift the boat out of the water and across the pier, a gust of wind caused the boat to sway. The boat struck Scott in the head, and Scott suffered a severe closed head injury with massive intra-cerebral swelling requiring a craniotomy.

On April 3, 2000, Scott and his wife, Lauren Scott, filed a six-count complaint in the United States District Court for the Northern District of Illinois. Counts I and II alleged claims against Total Marine under the Jones Act, 46 U.S.C. § 688 *et seq*. Counts III and IV alleged claims against Trump Indiana under § 905(b) of the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 905. Counts V and VI alleged claims against Lola Crane and crane operator Mark Nichols under general maritime jurisdiction, 28 U.S.C. § 1333.[2]

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[2] We will use the terms "maritime jurisdiction" and "admiralty jurisdiction" interchangeably throughout this opinion because the cases we will discuss use both terms.

The district court granted summary judgment in favor of Lola Crane and Nichols on February 22, 2001, stating the Scotts failed to satisfy the requirements of federal admiralty jurisdiction in their claims against these defendants. Specifically, the district court held that Scott's injury was not caused by a vessel on navigable waters. On February 27, 2001, the district court granted Total Marine's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), holding that the Scotts failed to make any allegations of facts that could arguably establish jurisdiction under the Jones Act. On June 19, 2001, the district court granted summary judgment in favor of Trump Indiana. While noting it had doubts as to whether Scott was covered by the LHWCA, the court held that, even assuming Scott would be covered by the LHWCA, there was no evidence of any negligence by the *Trump Casino*. The Scotts filed a timely notice of appeal, challenging the district court's rulings with respect to Lola Crane, Nichols, and Trump Indiana. The Scotts do not appeal the court's ruling on Total Marine's Rule 12(b)(6) motion to dismiss.

ANALYSIS

A. Lola Crane and Mark Nichols

We review a district court's legal determination as to whether subject matter jurisdiction exists *de novo*, while the district court's factual determinations are reviewed for clear error. *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379, 381 (7th Cir. 2001). Article III of the Constitution grants federal jurisdiction over "all Cases of admiralty and maritime Jurisdiction." U.S. Const. art. III, § 2. Under 28 U.S.C. § 1333, "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, ..." Traditionally, admiralty tort jurisdiction existed only when the tort in question occurred on navigable waters. *Jerome*

B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 531-32 (1995). However, in 1948, Congress enacted the Extension of Admiralty Jurisdiction Act, 48 U.S.C. app. § 740, which provides, "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

Following the Extension of Admiralty Jurisdiction Act, courts have established a two-part test to use in determining whether admiralty jurisdiction exists. "A party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with maritime activity." *Grubart*, 513 U.S. at 534. "A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water." *Id.* (citing 46 U.S.C. app. § 740). The connection with maritime activity assessment, also known as the nexus test, examines two issues, first, whether the incident in question has "a potentially disruptive effect on maritime commerce," and second, "whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." *Weaver*, 255 F.3d at 382 (internal quotations and citations omitted).

We focus first on the location prong. It is undisputed that the alleged tort did not occur on navigable water. Therefore, for admiralty jurisdiction to exist, Scott's injury must have been "caused by" the vessel *Trump Casino*. The Supreme Court has interpreted the Extension of Admiralty Jurisdiction Act's use of the phrase "caused by" as requiring proximate causation. *Grubart*, 513 U.S. at 536. For purposes of the locality test, an "appurtenance" to a vessel is treated as part of the vessel itself. *Id.* at 535. We must determine, therefore, whether Scott's injury was caused by an appurte-

nance to the *Trump Casino*. Appellants contend that it was, arguing that both the life raft and the crane qualify as appurtenances.

Appellants liken their case to *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 209-10 (1963), in which the Supreme Court held jurisdiction existed under the Extension of Admiralty Jurisdiction Act when a longshoreman was injured after slipping on loose beans that had leaked from a defective cargo container which had been unloaded from a ship. The *Gutierrez* court held the cargo containers constituted a part of the ship's "gear." *Id.* at 215. In its later decision in *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 210-11 (1971), the Supreme Court characterized its decision in *Gutierrez* as turning "upon the fact that [Gutierrez's] injury was caused by an appurtenance of a ship, the defective cargo containers."

The Supreme Court in *Victory Carriers* again addressed an injury to a longshoreman working on a pier. In *Victory Carriers*, the plaintiff was injured while driving a forklift truck on a pier where the *S.S. Sagamore Hill* was docked. As the plaintiff was operating the forklift, the forklift's overhead protection rack came loose and fell on him, injuring him. *Victory Carriers*, 404 U.S. at 203. At the time of his injury, plaintiff was moving cargo to a point from which it would eventually be hoisted onto the *Sagamore Hill* by the ship's own gear. *Id.* The forklift at issue was owned by plaintiff's stevedore employer. *Id.* Declining to "extend the reach of federal law to pier-side accidents caused by a stevedore's pier-based equipment," the Supreme Court held maritime law did not apply. *Id.* at 204.

The Eleventh Circuit recently addressed the question of when an item is an appurtenance to a vessel in *Anderson v. United States*, 317 F.3d 1235 (11th Cir. 2003), *petition for cert. filed*, 71 U.S.L.W. 3791 (U.S. Apr. 7, 2003) (No. 02-1822). The plaintiff in *Anderson* was injured when an air-

craft launched from the aircraft carrier *USS John F. Kennedy* during a training mission released two bombs which missed their target and impacted near Anderson's work site. *Id.* at 1236. The Eleventh Circuit held that the aircraft was an appurtenance to the *Kennedy* at the time of Anderson's injuries. *Id.* at 1238. In reaching this conclusion, the court noted the following definition of an appurtenance: "'any specifically identifiable item that is destined for use aboard a specifically identifiable vessel and is essential to the vessel's navigation, operation, or mission.'" *Id.* (quoting *Gonzalez v. M/V Destiny Panama*, 102 F.Supp.2d 1352, 1354-57 (S.D. Fla. 2000)). The court found that the aircraft was assigned to the *Kennedy* and was housed on the ship, that its operations were controlled by personnel aboard the *Kennedy* at all times, and that, at the time Anderson was injured, the aircraft was carrying out the *Kennedy*'s mission. *Id.*

Turning to the facts of the present case, it is clear that the crane was not an appurtenance to the *Trump Casino*. The crane was a completely land-based piece of equipment that was hired by Total Marine for one day. The fact that other vessels the size of the *Trump Casino* generally have a crane on-board is immaterial. The crane in the present case was never aboard the *Trump Casino*. It was not mounted on or in any way physically connected to the vessel. Additionally, the crane was never under the control of *Trump Casino* personnel. Total Marine hired Lola Crane, and Nichols drove the crane to the pier and operated it. Considering all the relevant case law, the crane is most similar to the forklift at issue in *Victory Carriers*. The crane was not stored on board or a part of the ship's usual gear, it was not attached to the ship in any way, it was not under the control of the *Trump Casino* or its crew, and Scott's injury did not occur aboard the ship or on its gangplank. *See Victory Carriers*, 404 U.S. at 213-14. Were we to adopt appellants' argument, we would be extending

the bounds of admiralty jurisdiction to include a pier-side accident caused by a pier-based piece of equipment that was not owned or operated by a vessel or its crew. This is a step that we, like the Supreme Court in *Victory Carriers*, are unwilling to take.

The determination as to whether the life raft was an appurtenance of the *Trump Casino* is a closer question. Appellants characterize the life raft as "equipment of the Trump vessel which was in the course of a 'round trip' to be deflated, repacked and eventually replaced as part of the vessel's safety requirements." Clearly, the life raft was a part of the *Trump Casino*'s usual gear. Additionally, a satisfactory life safety system was required to allow the *Trump Casino* to operate. However, unlike the aircraft in *Anderson*, which was controlled at all times by personnel aboard the *Kennedy*, *see Anderson*, 317 F.3d at 1238, at the time of Scott's injury, the life raft was not under the control of *Trump Casino* personnel. *See also Victory Carriers*, 404 U.S. at 214 (noting that at the time of the injury the forklift was not under the control of the ship or its crew). Total Marine employees attached the life raft to the crane ball, and, as appellants note in their brief, "Nichols was in control of the lifting procedure at all times." Given the unique facts of this case, we believe that at the time the life raft was being hoisted across the pier by Nichols, it could no longer be considered an appurtenance of the *Trump Casino*.

However, even assuming the life raft could be considered an appurtenance at the time of Scott's injury, appellants fail to allege the life raft proximately caused Scott's injury. Unlike the situation in *Gutierrez*, Scott's injury was not caused by a defect in the life raft. The present case is similar to *Margin v. Sea-Land Services, Inc.*, 812 F.2d 973 (5th Cir. 1987). In *Margin*, the plaintiff was injured when he slipped while attempting to avoid being struck by a hatch cover from the *M/V Boston*, which was being lowered by a

dock-based crane that was owned and operated by a stevedoring company. *Id.* at 974. The Supreme Court examined *Margin* in a footnote in *Grubart*, noting that the case "turned not on the condition of the hatch cover, the putative appurtenance, but on the fact that the plaintiff did not allege that 'vessel negligence proximately caused his injury.'" *Grubart*, 513 U.S. at 535 n.1 (quoting *Margin*, 812 F.2d at 977). In their claims against Lola Crane and Nichols, appellants do not allege the life raft caused Scott's injury. Rather, appellants contend that Scott's injury resulted from the negligent and careless maintenance, operation, and control of the crane. Based on the record evidence, it cannot be said that Scott's injuries were caused by a vessel in navigable waters or its appurtenances. Because the Scotts cannot satisfy the locality test, general admiralty jurisdiction does not exist for their claims against Lola Crane and Nichols, and we need not address the nexus test. State, not federal, law governs any claims the Scotts may have against Lola Crane and Nichols. We vacate the district court's grant of summary judgment and dismiss the Scotts' claims against Lola Crane and Nichols for lack of subject matter jurisdiction.

B. Trump Indiana

In Counts III and IV of their complaint, the Scotts alleged claims against Trump Indiana under § 905(b) of the LHWCA. Trump Indiana moved for summary judgment, arguing that Scott was not covered by the LHWCA. For purposes of analysis, the district court assumed Scott fell under the protection of the LHWCA. Nevertheless, the court granted summary judgment in favor of Trump Indiana, holding that there was no evidence of any negligence by the *Trump Casino*.

We review a district court's grant of summary judgment *de novo*. *Moore v. J.B. Hunt Transport, Inc.*, 221 F.3d 944,

950 (7th Cir. 2000). Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In our analysis, we view the evidence in the light most favorable to the Scotts and draw all reasonable inferences in their favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

Under § 905(b) of the LHWCA,

> [i]n the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title.

33 U.S.C. § 905(b). The coverage section of the LHWCA, 33 U.S.C. § 903, provides,

> compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, maritime railway,

> or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

33 U.S.C. § 903(a). The LHWCA was amended in 1972 to define the term "employee" to mean "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker." 33 U.S.C. § 902(3). In 1984, § 902(3) was amended to specifically exclude from coverage various categories of workers if the individuals are covered by a state workers' compensation law. 33 U.S.C. § 902(3)(A)-(H). Section 902(3)(D) expressly excludes "individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer [as defined in the Act], and (iii) are not engaged in work normally performed by employees of that employer under this chapter."

While basing its decision on a different issue, the district court noted that Scott appeared "to be potentially excluded [from LHWCA coverage] by the vendor exception," 33 U.S.C. § 902(3)(D). However, before we reach the § 902(3) exceptions, we must examine the threshold question of whether Scott was engaged in maritime employment. *See Bienvenu v. Texaco, Inc.*, 164 F.3d 901, 909 (5th Cir. 1999) (en banc) ("If a person who would otherwise be covered under the LHWCA does the type of work enumerated by one of these amendments and is covered by a state workman's compensation act, he is not covered by the LHWCA."). The Supreme Court examined the term "maritime employment" in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985), noting that in enacting the 1972 Amendments to the LHWCA, "Congress did not seek to cover all those who breathe salt air." *Id.* at 423. The Court interpreted Congress's purpose as covering "those workers on the situs who are involved in the essential elements of load-

ing and unloading; it is 'clear that persons who are on the situs but not engaged in the overall process of loading or unloading vessels are not covered.'" *Id.* (quoting *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 267 (1977)). The Court noted that while the term "maritime employment" was not limited to the occupations specifically listed in § 902(3), that is "any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker," neither could "it be read to eliminate any requirement of a connection with the loading or construction of ships." *Id.* at 423-24.

Under the facts of this case, Scott cannot show that he was involved in maritime employment. Scott's position with Total Marine was Director of Training. As such, he spent his time on clients' vessels "servicing or doing needs analysis, developing training or doing on-site training." While Scott's brief states he was "directing" a safety drill at the time he was injured, there is no evidence to that effect. Scott, in his affidavit, stated he was "participating" in the drill. The evidence in the record shows Scott was not an active participant but rather observed the drill from the vessel's upper deck and from land. As the Scotts' acknowledge in their Statement of Facts, "[a] successful demonstration for the Coast Guard *by Trump crew members* was necessary to enable the Trump vessel to operate on the navigable waters of Lake Michigan." (emphasis added). Scott was not involved in maritime employment, and therefore, he falls outside the scope of the LHWCA. The district court correctly granted summary judgment in favor of Trump Indiana.

CONCLUSION

Appellants' claims against Lola Crane and Mark Nichols are DISMISSED for lack of subject matter jurisdiction. The

district court's grant of summary judgment in favor of Trump Indiana is AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

RUSSELL A. SCOTT and LAUREN SCOTT, Plaintiffs,	)	
	)	No. 00 C 2001
v.	)	
	)	HONORABLE
MGI AMERICA, INC., TRUMP INDIANA, INC., et al. Defendants.	)	JOHN A. NORDBERG

DOCKETED FEB 26 2001

MEMORANDUM OPINION AND ORDER

Plaintiffs Russell A. Scott and Lauren Scott filed a 6-count complaint against Defendants MGI America, Inc., d/b/a Total Marine Safety Center ("MGI"), Trump Indiana, Inc. ("Trump"), Lola Crane Rental Company("Lola"), and Mark Nichols("Nichols"). The Plaintiffs seek redress for severe injuries allegedly suffered by Plaintiff Russell Scott while working on safety equipment for the ship Trump Casino. Plaintiffs raise two Jones Act claims against MGI, two Longshore and Harbor Worker's Compensation Act ("LHWCA") claims against Trump, and two general maritime claims against Lola and Nichols. Before the court is Defendants Lola and Nichol's Motion for Summary Judgment.

BACKGROUND

The essential facts relevant to this motion are largely undisputed. On April 4, 1997, Plaintiff Russell Scott ("Scott") suffered a work-related injury at Buffington Harbor, Indiana. Scott, then employed by MGI, was directing a life raft drill for the vessel Trump Casino. During the drill, a life raft was deployed from the Trump Casino via guy lines and then moved several hundred yards to a pier *(see* Nichols Dep. at 21; Scott Affidavit at ¶ 5). At the pier, employees of MGI (*see* Scott Affidavit at ¶ 8), who were riding in the life raft, attached the life raft to the crane hook. The life raft was then to be lifted by a shore-based crane (located 10-20 feet from the water) owned by Defendant Lola and operated by Defendant Nichols. After being removed from the water, the life raft was to be inspected, repacked and returned to Trump Casino. However, difficulties arose. While being removed from the water and lifted onto the pier, the life raft struck Scott, who was standing on the pier, injuring him.

Defendants Lola and Nichols move for summary judgment on the grounds that there is no general admiralty jurisdiction over this action. Defendants maintain that the injury did not occur on a navigable water way and was not caused by a vessel or it appurtenances. Defendants argue that the injury to Scott occurred on land and was caused by a land based crane.[1]

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[1] In the alternative, Defendants argue that to the extent Plaintiffs' pleadings can be construed as negligence claims under state law, they are barred by the statute of limitations. Plaintiffs have not responded to this argument, so the court will presume that they did not intend to raise state law claims.

LEGAL STANDARDS

Summary Judgment

Under Rule 56 of the Federal Rules of Civil Procedure, the Court may grant summary judgment only if the factual record shows that no genuine issue of material fact exists and the movant is therefore entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Bratton v. Roadway Package System, Inc.*, 77 F.3d 168, 173 (7th Cir. 1996). The movant bears the initial burden of demonstrating the absence of any genuine issues of material fact. *Hudson Insurance Co. v. City of Chicago Height*, 48 F.3d 234, 237 (7th Cir. 1995). If the moving party meets this burden, the nonmovant must reply by setting forth specific facts demonstrating the existence of genuine issue for trial. FED. R. CIV. P. 56(e); *NLFC, Inc. v. Devcom Mid-AmericQ, Inc.*, 45 F.3d 231, 234 (7th Cir. 1995). In evaluating the motion, the court must draw all reasonable inferences from the record in the light most favorable to the nonmoving party. *Hamm v. Runyon*, 51 F.3d 721, 724 (7th Cir. 1995). A plaintiffs mere speculation, however, is not an adequate defense to a motion for summary judgment. *Patterson v. Chicago Association for Retarded Citizens*, 150 F.3d 719, 724 (7th Cir. 1998). The central inquiry is whether the evidence is so one-sided that no reasonable jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986)

Admiralty

"The district courts shall have original jurisdiction, exclusive of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled. . . ." 28 U.S.C. § 1333. "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases

of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. . . " 46 U.S.C. § 740.

A litigant who wishes to invoke federal admiralty jurisdiction must satisfy the requirements of both the location and connection with maritime activity tests. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). "A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water." *Id.* Two matters must be resolved under the connection to maritime activity test. First, the court "must 'assess the general features of the type of incident involved' to determine whether the incident has 'a potentially disruptive impact on maritime commerce,' . . ." *Id.* (internal cites omitted). Second, a court must determine whether 'the general character' of the' activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" *Id.* (internal cites omitted).

For purposes of the location test, "appurtenances" II attached to a vessel are deemed part of the vessel itself. *Id.* at 535. *See also Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971); *Egorov, Puchinsky, Afanasiev & Juring v. Terriberry, Carroll & Yancey*, 183 F.3d 453, 456 (5th Cir. 1999) (injury must be caused by a vessel). In *Victory Carriers*, a longshoreman was injured while driving a forklift owned by his employer and in the process of moving a load from the dock to a point where it could be loaded on to a ship by the ship's own equipment. 404 U.S. at 203. In concluding the claim was governed by state law, the Court noted that the injured longshoreman "was not injured by equipment that was part of the ship's usual gem or that was stored on board, the equipment that injured him was in no way attached to the ship, the forklift was not un-

der the control of the ship or its crew, and the accident did not occur aboard ship or on the gangplank." *Id.* at 213-14.

DISCUSSION

In essence, the Defendants claim that Plaintiffs cannot satisfy the location test,[2] in that the injury was not caused by a vessel or its appurtenance. Plaintiffs raise three arguments in opposition to the motion. First, they emphasize that the injury occurred during a Coast Guard mandated safety drill that was essential to the functioning of Trump Casino, and that the crane involved in the accident was essential to the ship' s performance of the safety drill. Second, they argue that the crane was "attached" to Trump Casino via a contractual relationship. Third, they assert that Scott was actually struck by a life raft, an "appurtenance" to the vessel Trump Casino.

Plaintiffs' first two arguments can be dispensed with quickly. It appears undisputed that the crane was neither mounted on or in any way physically connected to the Trump Casino. That it was "essential" to the life raft drill does not transform the crane into vessel's standard maritime equipment. It was simply a land-based piece of equipment that was contracted to do some work on the dock that particular day. As such, it is not an "appurtenance" to the vessel. Plaintiffs argument that the crane was "attached" to the vessel via a contractual relationship is similarly unavailing. We initially note that there appears to have been no contractual relationship between

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[2] An injury incurred during a lifeboat drill would appear to satisfy the connection test, as a lifeboat drill would likely be deemed a traditional maritime activity. *See generally Sisson v. Ruby*, 497 U.S. 358, 367 (1990) (storage and maintenance of a vessel).

Lola/Nichols and Trump; the contract for the crane's services was between MGI and Lola/Nichols. (*See* Defendants' Supplemental Rule 56.1 Statement at ¶508; Scott Affidavit at ¶9; Scott Dep. At 65-66.) Further, the "contractual attachment" theory, for which Plaintiffs cite no authority, if accepted by this court, could expand admiralty jurisdiction beyond all rational bounds. For example, suppose Trump Casino contracted with a limousine service to transport guests to and from the ship. By Plaintiffs reasoning, if one of the limousines had a routine traffic accident 20 miles inland, admiralty jurisdiction would apply because the limousine was attached to (become an appurtenance of) the ship via the contract. That is not the law.

Thus, the resolution of this motion comes down to Plaintiffs' third argument and two very narrow issues—is the life raft that struck Scott an "appurtenance" of the Trump Casino and did the vessel "cause" the injury in any meaningful sense.

We note initially that the life raft was part of the Trump Casino's standard, required equipment. However, at the time of the accident the life raft was several hundred yards from the vessel and under the control of third parties (MGI employees). As such, the life raft was not attached to the ship or being operated by the ship's crew, nor did the injury occur while it was being loaded on or unloaded from the ship. The Trump Casino appears to have been only peripherally involved at the time of the accident. *See generally Florio v. Olson*, 129 F.3d 678, 680 (1st Cir. 1997) (injury not caused by vessel because "the line that snapped was not attached to the ship or supplied by the ship"). There are cases which hold that a shipowner must provide a safe means of egress to/from the ship, so liability can attach for injuries incurred going from the main vessel to a servicing crewboat. *See, e.g., Massey v. Williams-McWilliams, Inc.*, 414 F.2d 675 (5th Cir. 1969), *cert. denied,*

396 U.S. 1037 (1970). However, even if we were to analogize a life raft to a crewboat, it would not help the Plaintiffs. Scott was not traveling to or from the ship on the life raft when he was injured.

Lastly, we're left with the question of when does a life raft cease to be an appurtenance to the ship? When it's hanging on the side of the vessel it would clearly be an appurtenance. Similarly, by analogy to cases addressing cargo containers and ship-mounted cranes, when the life raft is being lowered from or loaded onto the vessel it would be an appurtenance. The same result would be warranted when the life raft is deployed/maneuvered from the vessel via the guy lines. On the other extreme, after the life raft has been removed from the water, inspected, repackaged, and loaded on a truck to be driven back to the vessel, the answer would appear to be that the life raft is not (then) an appurtenance to the vessel. In that latter case, if someone carelessly knocked the repacked life raft off the truck and it fell and injured someone standing next to the truck in the parking lot, it would not to be an admiralty case.

In this case, Scott was injured while standing on the pier. The life raft which struck him was several hundred yards from Trump Casino and had been operated by his coworkers at MGI rather than crew members of the vessel. Moreover, the actual injury took place after the life raft had been lifted from the water by a land-based crane that had no attachment, contractual or otherwise, to the vessel. Under these facts, we must conclude there is no general admiralty jurisdiction.

CONCLUSION

For the foregoing reasons, Lola and Nichol' s Motion for Summary Judgment is GRANTED. Judgment is entered for Defendants Lola and Nichols and against Plaintiffs.

ENTER:

/s/ John A. Nordberg
John A. Nordberg
Senior United States District Judge

Dated: February 22, 2001